POINT II

Respondent instituted proceedings against petitioner in the Court below upon a foreign judgment (Maryland) which petitioner always contended was in fact and in substance a void judgment. The record is replete with evidence supporting petitioner's contentions as to the invalidity of the foreign judgment (Maryland) obtained originally against him by respondent. The trial court below (Virginia) arbitrarily refused to scrutinize the valid and legitimate contentions and position of petitioner, all of which were supported by adequate and substantial evidence. Petitioner urged again and again that the foreign judgment (Maryland) was void, since that Court never had jurisdiction over him so as to be able to legally and validly enter a lawful judgment against him in favor of respondent.

The record clearly shows that petitioner was a non-resident of Maryland at the time of the entry of the judgment against him in favor of respondent. The case of *Owens v. McCloskey (Owens v. Henry)*, 161 U.S. 64, 16 S.Ct. 683, 40 L.Ed. 837, held that a judgment rendered in an action of debt against a non-resident, who has not been served with process or failed to voluntarily appear as a defendant in such case, has no binding force. Such was the situation in the case at bar so far as the foreign judgment (Maryland) was concerned herein. In the case of *Webster v. Reid*, 11 How. 437, 13 L. Ed. 761, it was held that no person is required to answer a suit on whom process has not been served. Such was the position of petitioner in the case at bar. This fundamental and basic principle of law as asserted in the above precedent is immutable. The record clearly supports petitioner's position, that the Maryland Court never had jurisdiction over his person.

In light of the record of this case and the law applicable thereto, the determination of the issues in this case by the Court below can hardly be detached from arbitrary action on its part, the same being contrary to established law.

POINT III

Petitioner submits that the record of this case is replete with evidence pointing to nullity and invalidity of the foreign judgment (Maryland) obtained against him upon which respondent instituted its suit in Virginia in the case at bar. Petitioner neither waived service of process upon himself, nor did he voluntarily enter an appearance, or ever appear before the Maryland court. Further, petitioner did not authorize or sanction an attorney to enter an appearance for him in the Maryland case.

The record is clear and replete with evidence that only through mistake and inadvertence, and for no other reason or cause, did an attorney enter his appearance for an on behalf of petitioner herein. Unless petitioner sanctioned such representation of his person by counsel, it must follow that the judgment subsequently entered against him individually is void. Since the Maryland Court did not have jurisdiction over him, respondent, in Virginia, instituted proceedings against petitioner upon an invalid and void judgment.

In the case of *Levy v. Fitzpatrick*, 15 Pet. 167, 10 L.Ed. 699 it was held that a valid and subsisting judgment could not be entered against a defendant unless properly served with process or unless he waives the necessity of such service of process. Also see *Godfrey v. Terry*, 96 U.S. 171, 24 L. Ed. 944, also see *D'Arcy v. Ketchum*, 11 How. 165, 13 L. Ed. 648.

In the case of *Water Hammer Arrester Corp. v. Tower*, 66 F. Supp. 732, affirmed 156 F.2d 775, cert. denied 67 S.Ct. 501, 329, U.S. 806, rehearing denied 67 S.Ct. 674, cert. denied 68 S.Ct. 452, the court held that the relationship between an attorney and his client is too sacred to admit even the shadow of abuse, and every doubt will be resolved in favor of the client. Also see *National Exchange Bank v. Wiley*, 195 U.S. 257, 25 S.Ct. 70, 49 L. Ed. 184.

The Courts of Maryland have long held that they have no jurisidction to render a judgment against one not served

within the state, nor voluntarily appearing before the Court. See *Piedmont-Mt. Airy Guano Company of Baltimore v. Merritt*, 140 A. 62; 154 Md. 226, and also see *Wilmer v. Epstein*, 81 A. 379, 166 Md. 140.

In Virginia as early as 1898 in the case of *McGeorge v. Bigstone Gap Imp. Co.*, 88 Fed. Rep. 599, it was held that a general appearance by an attorney must be authorized before it will confer jurisdiction of the person on the Court. Also see the case of *Nixon v. Rowland*, 192 Va. 37, and *Shelton v. Tiffin*, 6 Howard 183. The failure of the trial Court below in the case at bar to protect his rights and void its arbitrary rulings and findings in favor of respondent constituted a violation of due process unto petitioner and precluded him from equal protection of the law as assured and guaranteed under the 5th and 14th Amendments to the Constitution of the United States.

POINT IV

Petitioner herein had only one opportunity to seek a resolution of his position with respect to the validity of the foreign judgment (Maryland) and that obtained in the case at bar. Yet, notwithstanding this, the trial court below refused to grant him this opportunity and grant him "his day in court".

All of the issues, pertaining to and concerning the validity of the foreign judgment (Maryland) and all other issues existing between these parties were available to be resolved in this case in controversy in the trial forum below. Notwithstanding all of the foregoing, the trial court failed to act upon all of the evidence submitted by petitioner; and the trial court utterly failed, neglected and refused to resolve all issues presented. This failure and denial on the part of the trial court was a denial of due process unto petitioner and violated his basic Constitutional rights.

An integral part of "due process of law" is the right to a "day in court" that is, an opportunity to be heard. *Moore*

v. Smith, 177 Va. 621. A personal judgment must rest upon personal service of process, or upon voluntary appearance, otherwise there is want of due process of law. Also see *Lickard v. Whitenack*, 151 Va. 143. The arbitrary denial by the trial court below of petitioner's right to be heard on all issues in this case and to have the trial court consider all of the same, impartially, makes manifest that this petitioner was denied due process as guaranteed by the Constitution of the United States.

CONCLUSION

It is respectfully urged that the petition for rehearing be granted and that, upon further consideration, a Writ of Certiorari issue to the Supreme Court of Appeals of Virginia.

Respectfully submitted,

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NA8-6158

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CERTIFICATE OF COUNSEL

I, Josiah Lyman, counsel for the above-named petitioner, do hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay and that it is restricted to the grounds specified in Rule 58 Subdivisions 1. and 2. of the Rules of this Court.

Josiah Lyman
Attorney for Petitioner